

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

O.A/T.A No. 294/2007

R.A/C.P No.....

E.P/M.A No.....

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SECTION OFFICER (Judl.)

Sehgal  
06.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 204/2007
2. Mise Petition No. 1
3. Contempt Petition No. 1
4. Review Application No. 1

Smti. Ma. Dineati

Applicant(s) Thaps No. 34 ors. VS Union of India & Ors

Advocate for the Applicants:-

Mr. Adil Ahmed  
Miss S. Bhattacharjee

Advocate for the Respondents:-

Addl. C.G.S.C Miss U. Das

Notes of the Registry	Date	Order of the Tribunal
<p>1. 34 ors. vs. Union of India &amp; Ors 2. Date 12/6/07 3. Regd. No. 654295</p>	18.07	<p>The applicants, 35 in numbers are all Group 'D' employees working under the office of the Commanding Officer, 181 Military Hospital, C/o 99 APO and claims to be fulfilled the eligibility criteria were getting House Rent Allowance from 1.10.1986 onwards. Vide letter dated 16.10.2001 issued by the respondent No.2 issued to various Army units declared that HRA paid to the Defence Civilian Employees from 1.10.1986 to 7.09.1999 was irregular and directed to recover from the individual concerned after issuing show cause notice. But over the years upto 2005 they slept over the matter and all of a sudden they have started recovery from June 2007 without issuing any show cause notice and without affording any opportunity to the applicants. The grievance of the applicants is that HRA was granted to them by the respondents themselves and as per rule.</p>

Steps taken with  
envelopes, or extra  
Charges for issuing  
notices to the respondents  
6 & 7 has deposited  
Recd. No.  
2349 on 18.07.

11/8

Heard Mr A.Ahmed, learned counsel for the applicants and Miss U. Das, learned Addl.C.G.S.C for the respondents. The learned counsel for the respondents prays for three weeks time to take instruction.

04-204/07 -2

1.8.07

Considering the issue involved in this case 3 weeks time is granted to the counsel for the respondents to get instruction. In the interest of justice this Tribunal directs that the respondents shall not make any further recovery towards alleged over payment of House Rent Allowance till the next date.

Post on 24.8.07 for admission and further order.

Received  
Alshad  
Addl. Cuse  
24/8/07

Vice-Chairman

24.8.07 Issue notice to the Respondents

No.1 to 5 except Respondent No.4. The learned counsel informed to stand by and respondent No.4 will take the steps. The applicants will take steps for respondents No. 6 & 7.

Interim order shall continue. Post the matter 26.9.07.

Vice-Chairman

26.9.2007

Mr. A. Ahmed, learned counsel for the

Applicant and Ms. U. Das, learned Addl.

Standing Counsel for Central Government

are present. Call this matter after six weeks awaiting reply from the Respondents.

26.9.07

Call on 14.11.2007. Interim order

which was passed earlier in this case shall

continue to remain in force till the disposal of the case.

Notice duly served

on R-4. 25-9-07

(Khushiram)  
Member (A)

(M. R. Mohanty)  
Vice-Chairman

(1) Service record awarded.  
(2) No W.S. filed.

3-  
OA 204/07

order dt-26/9/07  
issuing to learned  
advocate's for both  
the parties.

28/9/07

8-11-07

① Notice duly served on R.C.  
Others a/c/bb/ service /bb/  
② W.O. W.S. filed.

Notice duly served  
on R-4,1.

20/11/07.

Notice duly served  
on R-4,1,3.

15/11/07.

W/S not filed.

20/11/07.  
3.1.08.

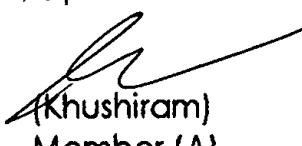
W/S not filed.

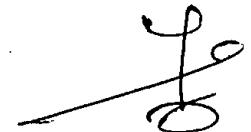
20/11/07.  
1.2.2008.

15.2.08  
W/S filed by the  
Respondents. Service  
copy served.

1.4.11.2007 No written statement has been filed  
in this case as yet.

Call this matter on 04.01.2008  
awaiting written statement from the  
Respondents.

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

04. 01.2008 No Written Statement has been filed  
in this case as yet.

Call this matter on 4<sup>th</sup> February,  
2008 awaiting written statement from the  
Respondents.

lm

  
(Khushiram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

04.02.2008

Written statement has been filed in Court  
today after serving a copy on the learned  
counsel appearing for the Applicant.

Subject to legal pleas to be examined at  
the final hearing, this case is admitted. Liberty is  
granted to the Applicant to file rejoinder by  
04.03.2008.

Call this matter on 04.03.2008.

/bb/

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

OA 204/07

~~18.2.08~~

~~Adal. W/S submitted  
to the Respondents, copy  
served.~~

~~W/S filed  
3.2.08~~

~~Rejoinder not  
filed.~~

~~21.4.08~~

04.03.2008 Mr. A. Ahmed, counsel appearing for the Applicant requested for more time to file rejoinder. Mr. G. Baishya, learned Sr. Standing Counsel Appearing for the Respondents ~~is also~~ present.

Call this matter on 22.04.2008 awaiting rejoinder from the Applicant.

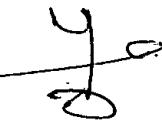
lm

  
(Khushiram)  
Member (A)

22.04.2008

On the request of Mrs. S. D. Choudhury, learned counsel appearing for the Applicant, the matter is listed for hearing on 01.05.2008.

lm

  
(M.R. Mohanty)  
Vice-Chairman

01.05.2008

Mr. A. Ahmed, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents are present.

Counsel for the Applicant wants to file rejoinder. Let it be filed ~~next date~~ on 21.05.2008.

~~Rejoinder not  
filed.~~

~~19.5.08~~

lm

  
(Khushiram)  
Member (A)

O.A. 204 of 07

21.5.2008 In this case written statement has already been filed by the Respondents. Despite opportunities, the Applicant had chosen not to file their rejoinder.

DL. 21.5.08.  
P.L. Send copies of this order to the learned court and to the Respondents.

khushiram

Call this matter on 28.07.2008 for hearing, when; the Respondents should file cause production of Departmental Records for perusal.

Send copies of this order to the Applicant and the Respondents in the address given in the O.A. and free copies of this order be supplied to the learned counsel appearing for both parties.

Y  
M.R.

(Khushiram)  
Member(A)

(M.R. Mohanty))  
Vice-Chairman

order dt. 21/5/08  
Send to Dissection  
for issuing to  
applicant and to  
the respondents by  
post.

Free copies of  
this order handed  
over to learned  
counsel for both  
parties.

2/6/08. D/NO-263770  
DL- 2646  
3/6/08.

W/S bikel.

25.7.08

28.07.2008 On behalf of the Applicant a prayer has been made seeking adjournment.

Call this matter on 29.08.2008.

Y  
Khushiram  
Member(A)

Y  
(M.R. Mohanty)  
Vice-Chairman

nkm

W/S bikel.

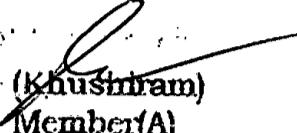
28.8.08

O.A.98 of 2008 (M.P.82 of 08)

14.08.2008 Claim of the Applicants, to get family pension and other pensionary benefits,

O.A. 204 of 07

29.08.2008 Call this matter on 24th September 2008 for hearing.

  
(Khushniram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

lm

2. 9. 08

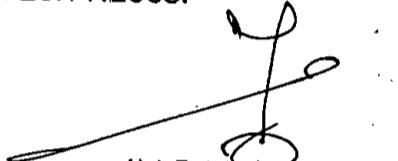
Rejoinder filed by the Applicants against W.P. copy served.

  
S.N. Shukla

24.09.2008 None appears for the Applicant. Mr. Adil Ahmed, learned counsel appearing for the Applicant, has sent a leave note. Mr. M.U. Ahmed, learned Addl. Standing counsel for the Union of India is however present.

Call this matter on 26.11.2008.

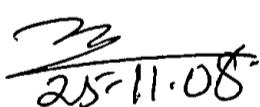
  
(S.N. Shukla)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

/bb/

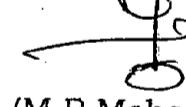
23. 9. 08

The case is ready for hearing.

  
25-11-08

26.11.2008 Call this matter on 20th January, 2009 for hearing.

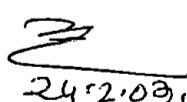
lm

  
(M.R. Mohanty)  
Vice-Chairman

20.1.09 Bench is not available.  
List on 25.2.09 for hearing.

  
C.

The case is ready for hearing.

  
24.2.09

O.A.204 of 07

25.02.2009 Call this matter on 17.03.2009 for hearing.

The case is ready for hearing.

3  
16.3.09.

lm

  
(M.R. Mohanty)  
Vice-Chairman

17.03.2009

Mr.N.Ahmed holding the brief of Mr.A.Ahmed states that Mr.A.Ahmed is out of station and prays for adjournment.

khairul

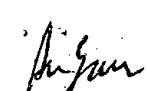
~~20/3~~

Prayer is accepted. Put up this case on 23.03.2009.

The case is ready for hearing.

3  
20.3.09

/bb/

  
(A.K.Gaur)  
Member (J)

23.03.2009

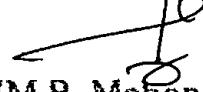
Mr N. Ahmed, learned Advocate (who represents Mr A. Ahmed, learned Counsel appearing for the Applicant) is present.

Call this matter for hearing on 08.05.2009.

The case is ready for hearing.

3  
7.5.09.

nmk

  
(M.R. Mohanty)  
Vice-Chairman

14-5-2009

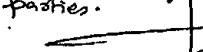
08.05.2009 Mr. A. Ahmed, learned counsel for the Applicant is present. Ms. Usha Das, learned Addl. Standing Counsel representing the Respondents is present.

On consent of parties, call this matter for hearing at Itanagar on 12.06.09  
Send copies to both parties.

Copy of the order  
Dtd - 8.5.09 prepared  
and sent to D. Section  
for issuing to the  
both parties.

Vide D.NO-24433 <sup>lm</sup> to 2442

Dtd. 18.5.09.

  
(M.R. Mohanty)  
Vice-Chairman

20  
02.06.2009

This case has been fixed (to 12.06.2009) to

be taken up for hearing at Itanagar.

3.06.2009

Copy of the order

Dt. - 2.6.2009 prepared

and Send to D. Section  
bar issuing of the bothItanagar programme having been  
cancelled, this matter shall now be taken up at  
Guwahati on 12.06.2009.Send copies of this order to both parties  
and to the Advocates of both parties.

Parties and learned

Advocate for the  
parties.(M.R.Mohanty)  
Vice-Chairman

Vide D.No - 2827 to 2868

12.06.2009 Mr. N. Ahmed, advocate is  
present on behalf of the Applicants.

Date : — 3.6.09.

Ms. Usha Das, learned Addl.  
Standing Counsel is present on  
behalf of the Respondents.

Before going for hearing of this case, it is found that Annexure-1 to the written statement is not legible one. Respondents should produce legible copy of Annexure-1 to the Written statement and all such documents <sup>base</sup> ~~placing~~ on which is being paid to the Applicants with effect from 1986. The authorities, under which House Rent Allowance were being paid to the Applicants, should be produced before we start the hearing of this case. Ms. Usha Das, learned Addl. Standing Counsel should make all endeavor to find out all notifications connected with <sup>payment of</sup> HRA to Civilian Personnel ~~and~~ Armed Forces for an effective adjudication of the case.

Respondents should give full assistance in the matter, well before the next date.

3.6.09.contd.

Contd/-

12.06.2009

Call this matter on 24<sup>th</sup> July 2009 for hearing.

15.6.09  
Send copies of this order to the Respondents and free copy to the Commissions for both the parties, immediate.

15.6.09  
Received  
Usha Das      lm  
Addl. Cuse  
15/6/09.

Send copies of this order to the Respondents and free copies of this order be also supplied to the learned counsel appearing for both the parties.

Y  
(M.R. Mohanty)  
Vice-Chairman

24.07.2009      On the request of Ms.U.Das, learned Addl. Standing counsel for the Respondents, call this matter on 31.08.2009 for hearing.

15.6.09  
order dt. 12.6.09 send to Dfs for issue the same to the Respondents and freebb/ copy to both the Commissions.

Note No — 3243 & 3250  
dt — 17.6.09

Y  
(M.K.Chaturvedi)  
Member (A)

Y  
(M.R. Mohanty)  
Vice-Chairman

31.08.2009      Call this matter on 21.10.2009 for hearing.

Y  
(M.K.Chaturvedi)  
Member(A)

Y  
(M.R. Mohanty)  
Vice-Chairman

The case is ready for hearing.  
15.6.09      lm.

23.7.09  
The case is ready for hearing.

28.8.09

The case is ready for hearing.

30.10.09  
The case is ready for hearing, 30.10.09

21.10.2009      Ms. Usha Das, learned Addl. Standing counsel appearing for Respondents seeks some more time to produce legible copies of the memorandum relied upon in support of the defence taken. Request is not opposed by Mr.N.Ahmed, learned counsel for Applicant.

List the matter on 03.11.2009.

Y  
(Madan Kumar Chaturvedi)  
Member (A)

Y  
(Mukesh Kumar Gupta)  
Member (J)

0-AN0. 204/2007

03.4.2009

Heard Mr A. Ahmed, learned Counsel for the Applicant and Ms U. Das, learned Addl. C.G.S.C. Hearing concluded.

~~Orders reserved.~~

3.11.2009

Heard Mr A. Ahmed, learned Counsel

for the Applicant and Ms U. Das, learned Addl. C.G.S.C. Hearing concluded.

**C.G.S.C. Hearing concluded.**

Orders reserved.

(Madan Kumar Chaturvedi)  
Member (A)

(Mukesh Kumar Gupta)  
Member (J)

09.11.2009 Judgment pronounced in open court,  
kept in separate sheets. O:A- is allowed. No  
costs.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)  
Member (A) Member (J)

Received  
Mother Day  
1910  
Hedge Case  
3/12/09

Issue wide memo

Nov 11 12836 Pg 12841 (Continued) 2.73  
01-08-12-2009

#### 4.2.1.2. Information, advice

12

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 204 of 2007

DATE OF DECISION: 9th Nov 2009

Smti Madhumati Thapa and 34 others

....APPLICANT(S)

Mr A. Ahmed

ADVOCATE(S) FOR THE  
APPLICANT(S)

- versus -

Union of India & Ors.

....RESPONDENT(S)

Ms U. Das, Addl. C.G.S.C.

ADVOCATE(S) FOR THE  
RESPONDENT(S)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

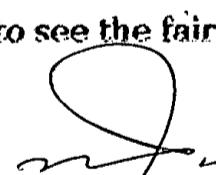
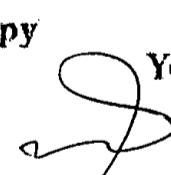
The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment ?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?

Yes/No

Yes/No

Yes/No

   
Member (J)/Member (A)

3

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No.204 of 2007

Date of Order: This the 9<sup>th</sup> day of November 2009.

**The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member**

**The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member**

1. Smti Madhumati Thapa  
P No.484679,  
Female Sweeper.
2. Smti Kiran Bora  
P No.483545  
Female Sweeper
3. Smti T.E. Khochulu  
P No.486013m  
Female Sweeper
4. Miss Rinchin  
P No.486011,  
Female Sweeper
5. Smti Khandamu  
P No.486012,  
Female Sweeper
6. Smti Rupali Khabisow  
P No.486861,  
Ward Sahaika
7. Smti T. Rema  
P No.485967,  
Ward Sahaika
8. Smti Lobsang Droma  
P No.485970,  
Ward Sahaika
9. Smti Pasang Rema  
P No.485960,  
Ward Sahaika
10. Smti Konju Droma  
P No.485689,  
Ward Sahaika

11. Miss Gauri Kumari  
P No.486863,  
Ward Sahaika
12. Miss Kalpana Rai  
P No.486860,  
Ward Sahaika
13. Shri Anand Bora  
P No.6825534,  
Chowkidar
14. Shri Tashi Phumiso  
P No.6826852,  
Chowkidar
15. Shri Avtar Singh  
P No.6825531,  
Chowkidar
16. Shri Sange Khandu  
P No.6826834,  
Chowkidar
17. Shri C.B. Mishra  
P No.6825533,  
Chowkidar
18. Shri P.C. Nath  
P No.481283,  
Mazdoor
19. Shri Jhepo Range  
P No.486026  
Mazdoor
20. Shri Sajal Paul  
P No.6825539,  
Cook
21. Shri Damber Bahadur  
P No.6825540,  
Cook
22. Shri Dawa Markapa  
P No.6826824.  
Cook
23. Shri Nurup Lama  
P No.486004  
Messenger
24. Shri Thung Jung  
P No.486005  
Messenger

25. Shri Nagender Thakur  
P No.481292  
Barber

26. Shri N.K. Thakur  
P No.481291,  
Barber

27. Shri Shiv Prasad  
P No.481290,  
Washer man

28. Shri M.D. Fazal  
P No.481289,  
Washer man

29. Shri Upendra Kumar Ram  
P No.486862  
Washer man

30. Shri Roop Narayan Ram  
P No.486864,  
Washer Man

31. Smti Bimla Lama  
P No.481182,  
Ward Sahaika

32. Shri M.K. Bora  
P No.6827134  
Civilian Safaiwala

33. Shri Govind Bahadur Chetri  
P No.6827135,  
Civilian Safaiwala

34. Shri J.B. Chetri  
P No.481288,  
Mali

35. Shri M.K. Bhagat  
Carpenter

..... Applicants

All the applicants are working if the Office of the  
Commanding Officer, 181 Military Hospital,  
C/o 99 APO.

By Advocate Mr A. Ahmed

- versus -

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Defence,  
South Block, New Delhi-1.

2. The Head Quarter  
5 Mountain Division (Med),  
Pin-908405, C/o 99 APO.
3. The Controller General of Defence Accounts  
West Block-V,  
R.K. Puram, New Delhi-66.
4. The Controller of Defence Accounts  
Udyan Vihar  
Narengi, Guwahati-6781171.
5. The Controller of Defence Accounts  
Patna,  
Ministry of Defence,  
Post Office- Patna, Bihar.
6. The Area Accounts Officer  
Ministry of Defence Shillong  
Bivar Road, Shillong-01. .... Respondents

By Advocate Ms U. Das, Addl. C.G.S.C.

ORDER

**MUKESH KUMAR GUPTA, JUDICIAL MEMBER**

35 applicants, working in different capacities like Chowkidar, Sweeper, Majdoor, Messenger etc., in this O.A., challenge Office Orders dated 02.04.2007 and 22.05.2007, wherein respondent Nos.3 and 4 have taken steps to recover House Rent Allowance (HRA for short) paid to them during the period 01.10.1986 to 07.09.1999 without issuing any show cause notice or providing any prior opportunity of hearing. They also seek direction to respondents to refund the amount already recovered on aforesaid aspect with all consequential benefits.



2. Admitted facts are: that applicants working in various capacities in the Office of Commanding Officer 181 Military Hospital were paid HRA from 01.10.1986 to 07.09.1999. Vide letter dated 16.10.2001 it was alleged that payment of aforesaid allowance paid to Defence Civilian employees was irregular and various Army Units were required to provide details of payment made on aforesaid account. Based on said communication, impugned communications were issued and Commanding Officer 181 Military Hospital was directed to start recovery of overpaid amount. Hence present O.A.

3. Grievance of the applicants is that aforesaid communications dated 02.04.2007 as well as 22.05.2007 are ex facie illegal, malafide, arbitrary and without justification. No opportunity of hearing or show cause notice was issued prior to effecting recovery. They had not made any misrepresentation or committed any fraud in obtaining said HRA. Since there was no fault on their part, said recovery after a long lapse of time is unsustainable in the eyes of law. Respondents being a model employer cannot take advantage of its dominant position. Applicants belonging to a lower stratum of society cannot be made to suffer huge financial hardship for no fault of theirs, emphasized Mr. A. Ahmed, learned counsel appearing for the applicants.

4. Reliance was placed on (1994) 2 SCC 521, Shyam Babu Verma and others Vs. Union of India and others, wherein it was held that when officials were paid higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount, which has already been paid to them. Said dictum has been followed in 2000

(2) GLP 516, Susama Acharjee (Smti) Vs. State of Tripura and others.

Thus it was prayed that present application deserves to be allowed.

5. By filing a reply, respondents raised preliminary objection that O.A. is unjust and unsustainable both in facts and in law. It suffers from non-joinder of necessary parties and misjoinder of unnecessary parties. It is also hit by the principles of waiver estoppel and acquiescence. On merits it was stated that payment of HRA to Defence Civilian employees in terms of Ministry of Finance letter dated 23.09.1986 for the period from 01.10.1986 to 07.09.1999 had been viewed irregular by Office of CGDA and advice was issued to recover the payment made on said account. Recovery of HRA was initiated since 16.10.2001, but due to administrative reasons it could not be started immediately. Learned counsel for the respondents contended that since applicants have been paid over and above their entitlement, they are not entitled to retain said benefits and any unjust amount paid to them is liable to recovered.

6. Ms U. Das, learned Addl. C.G.S.C. appearing for the respondents, placing reliance on 1997 (6) SCC 139, V. Gangaram Vs. Regional Joint Director and others, which had been followed in 2002 (2) SLR 452 (Rajasthan), Alam Ali Vs. State of Rajasthan, contended that since the applicants were paid certain allowance by mistake, they cannot object rectification of the mistake and consequent order of recovery.

7. We have heard Mr A. Ahmed, learned counsel for the applicants and Ms U. Das, learned Addl. C.G.S.C. appearing for the respondents, perused the pleadings and other materials placed on record. The law relating to recovery of excess payment made by the

Government is well settled. Hon'ble Supreme Court in 2007 (1) SCC (L&S) 529, Col. B.J. Akkara Vs. Government of India and others, on analyzing its earlier judgments in 1995 Supp (1) SCC 18, Sahib Ram Vs. State of Haryana; (1994) 2 SCC 521, Shyam Babu Verma Vs. Union of India; (1996) 4 SCC 416, Union of India Vs. M. Bhaskar and (1997) 6 SCC 139, V. Gangaram Vs. Regional Jt. Director, summarized the law and observed as under:

"The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. The Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employee from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

(emphasis supplied)



8. Aforesaid law in our respectful view is squarely attracted in the facts of present case. We may, at the cost of repetition, note that it is not a case, either pleaded or made out by respondents that applicants were guilty of any misrepresentation or fraud in regard to excess payment made on account of HRA. This being the position, we find no justification in the impugned action of respondents in effecting recovery, particularly, when there has been no opportunity of hearing afforded to them. Applicants belonging to lower ranks certainly, would spend whatever emoluments were received by them for upkeep of their family and if impugned action of respondents is sustained in law, it would cause undue hardship to them.

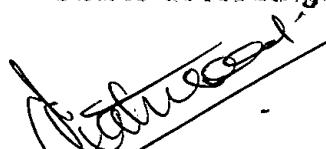
9. As far as reliance placed on V. Gangaram's case (*supra*) as followed in Alam Ali's case (*supra*) is concerned, we may note that V. Gangaram's case had been noticed by Hon'ble Supreme Court in Col. B.J. Akkara's case (*supra*) and yet it has been observed that excess payment paid for a long time would certainly be spent by the individual genuinely believing that he was entitled to and therefore, recovery of such excess amount would cause undue hardship. Therefore, we are of the view that reliance placed on V. Gangaram's case is of no help to respondents.

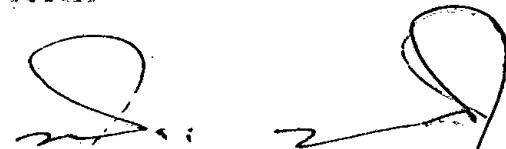
10. In the circumstances and for reasons noticed hereinabove, O.A. is allowed. We declare that respondents cannot recover HRA paid to them from 01.10.1986 to 07.09.1999. Since this Tribunal vide interim order dated 01.08.2007 have already restrained respondents



from taking any further steps to recover the amount paid on account of HRA no further order is required at this stage.

11. O.A. is accordingly allowed. No costs.

  
( MADAN KUMAR CHATURVEDI )  
ADMINISTRATIVE MEMBER

  
( MUKESH KUMAR GUPTA )  
JUDICIAL MEMBER

nkm

- 1 AUG 2007

गुवाहाटी न्यायालय  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI.

ORIGINAL APPLICATION NO. 204 OF 2007.

Smti Madhumati Thapa & 34 Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

- I N D E X -

Sl. No.	Annexure	Particulars	Page No.
1	...	Application	15
2	...	Verification	16
3	A	Photocopies of the letter dated 16.10.2001 and CDA Patna DO letter No.DPA/1/017/XIV dated 31.7.2001.	17-22
4	B	Photocopy of the letter dated 15.11.2001 issued by the Office of the Respondent No.2.	23-24
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6	D	Photocopy of letter No.717/Est./05 dated 21.5.2005 issued by the 181 Military Hospital, C/o 99 APO.	27
7	E	Photocopies of the letter No.Pay/6/HRA/CCA/VI dated 2.4.2007 issued by the Respondent No.4.	28
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Date: 01 - 08 - 2007.

Filed By:

Sonita Bhattacharjee

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI.

ORIGINAL APPLICATION NO. 264 OF 2007.

Smti Madhumati Thapa & 34 Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

**L I S T O F D A T E / S Y N O P S I S :**

16.10.2001 The Applicants all Group D employees after fulfilling all the eligibility criteria were getting House Rent Allowance from 1.10.1986 onwards. However, vide letter dated 16.10.2001 the Respondent No.2 issued to various Army units declared that HRA paid to the Defence Civilian Employees from 1.10.1986 to 7.09.1999 is irregular and hence directed to initiate recovery against the individual concerned after issuing show cause notice.  
(Annexure-A)

15.11.2001 Office of the Respondent No.2 requested all Army units to provide information regarding detailed payment of HRA and compensatory Field Area Allowance to Defence Civilian posted in newly defined field area.  
(Annexure-B)

7.3.2005 &  
17.4.2005 Office of the Respondent No.2 enclosing letter dated 7.3.2005 requested the Respondent No.7 to provide necessary information regarding payment of HRA to the Defence Civilians vide letter dated 17.4.2005.  
(Annexure-C)

21.5.2005 Respondent No.7 submitted details of payment of HRA to the Defence Civilians stating thereby that 44 Defence Civilians were paid HRA from 1.10.1986 to 7.9.1999.  
(Annexure-D)

2.4.2007 &  
22.5.2007 Respondent No.4 letter dated 2.4.2007 wrote to Respondent No.3 stating therein that 181 Military

Hospital C/o 99 APO agreed to recover the alleged over payment of HRA from per individual amounting to Rs.28,581/- The said Respondent vide letter dated 22.5.2007 directed the Respondent No.7 to intimate regarding recovery. As per the said letter Respondent No.7 started recover of the alleged over payment of HRA for the period from 1.10.1986 to 7.9.1999 from the month of June, 2007 onwards.

(Impugned orders – Annexures E & F Respectively)

The Respondents have started recovery of HRA from June, 2007 without issuing any show cause or without affording any opportunity to the Applicants. Hence this Original Application for seeking justice in this matter.

FILED BY

Smti. Madhumati Thapa  
.....Applicant No.1  
Through Smti. Smruti Bhattacharya  
(Advocate)  
2/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH GUWAHATI

(AN APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE  
TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 204 OF 2007.

BETWEEN

1. Smti. Madhumati Thapa.  
P No. 484679,  
Female Sweeper  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO.
2. Smti. Kiran Bora  
P No. 483545  
Female Sweeper  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO
3. Smti. T. E. Khochulu  
P. No. 486013  
Female Sweeper  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO
4. Miss Rinchin  
P. No. 486011  
Female Sweeper  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO
5. Smti. Khandamu  
P No. 486012  
Female Sweeper  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO
6. Smti. Rupali Khabisow  
P No. 486861  
Ward Sahaika  
Office of the Commanding Officer  
181 Military Hospital  
C/o 99 APO

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7. Smti. T. Rema  
 P No. 485967  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

8. Smti. Lobsang Droma  
 P No. 485970  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

9. Smti. Pasang Rema  
 P No.- 485969  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

10. Smti. Konju Droma  
 P No. 485689  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

11. Miss Gauri Kumari  
 P No. 486863  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

12. Miss Kalpana Rai  
 P No. 486860  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

13. Shri. Anand Bora  
 P No. 6825534  
 Chowkidar  
 Office of the Commanding Officer  
 181 Military Hospital

14. Shri Tashi Phumitso  
 P No. 6826852  
 Chowkidar

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Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

15. Shri. Avtar Singh  
 P No. 6825531  
 Chowkidar  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

16. Shri. Sange Khandu  
 P No. 6826834  
 Chowkidar  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

17. Shri C.B. Mishra  
 P No. 6825533  
 Chowkidar  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

18. Shri P.C. Nath  
 P No. 481283  
 Mazdoor  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

19. Shri Jhapo Range  
 P No. 486026  
 Mazdoor  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

20. Shri Sajal Paul  
 P No. 6825539  
 Cook  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

21. Shri Dambar Bahadur  
 P No. 6825540  
 Cook  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

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22. Shri Dawa Markapa  
 P No. 6826824  
 Cook  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

23. Shri Nurup Lama  
 P No. 486004  
 Messenger  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

24. Shri Thung Jung  
 P No. 486005  
 Messenger  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

25. Shri. Nagender Thakur  
 P No. 481292  
 Barber  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

26. Shri N.K. Thakur  
 P No. 481291  
 Barber  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

27. Shri Shiv Prasad  
 P No. 481290  
 Washer man  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

28. Shri M. D. Fazal  
 P No. 481289  
 Washer man  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

29. Shri Upendra Kumar Ram  
 P No. 486862  
 Washer man

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Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

30. Shri Roop Narayan Ram  
 P No. 486864  
 Washer man  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

31. Suniti Bimla Lama  
 P No. 481182  
 Ward Sahaika  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

32. Shri M.K. Bora  
 P No. 6827134  
 Civilian Safaiwala  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

33. Shri Govind Bahadur Chetri  
 P No. 6827135  
 Civilian Safaiwala  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

34. Shri J.B. Chetri  
 P No. 481288  
 Maili  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

35. Shri M.K. Bhagai  
 Carpenter  
 Office of the Commanding Officer  
 181 Military Hospital  
 C/o 99 APO

... Applicants.

-AND-

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1. The Union of India,  
Represented by the Secretary to the  
Government of India Ministry of  
Defence, South Block, New Delhi-1
2. The Head Quarter  
5 Mountain Division (Med)  
Pin- 908405  
C/o 99 APO
3. The Controller General of  
Defence Accounts  
West Block- V  
R.K. Puram,  
New Delhi-66
4. The Controller of Defence Accounts  
Udyan Vihar  
Narengi,  
Guwahati-6781171
5. The Controller of Defence Accounts  
Patna  
Ministry of Defence  
Post Office- Patna,  
Bihar.
6. The Area Accounts Officer,  
Ministry of Defence Shillong  
Bivar Road  
Shillong-01
7. The Commanding Officer  
181 Military Hospital  
C/o 99 APO.

.... Respondents.

#### DETAILS OF THE APPLICATION

##### 1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This application is made against the impugned office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 and dated 22.05.2007 issued by the Respondent No. 3 and 4, whereby, recovery of House Rent Allowances were started to the Applicants without issuing any show cause notice or giving any opportunity to the Applicants to put forward their case.

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**2. JURISDICTION OF THE TRIBUNAL :**

The Applicants declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

**3. LIMITATION :**

The Applicants further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

**4. FACTS OF THE CASE :**

Facts of the case in brief are given below:

- 4.1 That your humble Applicants are Indian Citizen by birth and as such they are entitled to get all the rights and privileges guaranteed under the Constitution of India.
- 4.2 That your Applicants beg to state that they are Defence Civilian Central Government employees and working as Female Sweepers, Ward Sahaika, Chowkidars, Mazdoors, Cooks, Messengers, Barbers, Washer-men, Civilian Safaiwala, Mali and Carpenter, under the Office of the Commanding Officer 181 Military Hospital C/o 99 APO. They all belong to Group- D category.
- 4.3 That your Applicants begs to state that they have got common grievances, common cause of action and the nature of relief prayed for is also same and similar and hence and having regard to the facts and circumstances they intended to prefer this application jointly and accordingly they crave leave of this Hon'ble Tribunal under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules'1987 and pray that they may be allowed to file the joint application for redressal of their common grievances.
- 4.4 That your Applicants beg to state that under the various Government of India Circulars/ Memorandums/ Orders they were paid House

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Rent allowances since 1<sup>st</sup> October 1986 by the Respondents without any interruption. The same has been paid to the Applicants by the Respondents themselves as the Applicants have fulfilled all the criteria for eligibility of the House Rent Allowance. However, the Respondent No. 2 i.e. the HQ 5 Mountain Division vide their letter dated 16<sup>th</sup> October 2001 addressed to various Army units including 181 Military Hospital notified that as per Controller of Defence Accounts, Patna DO letter No. PA/017/XIV dated 31<sup>st</sup> July 2001 that the House Rent Allowances paid to the Defence Civilian employees from 1<sup>st</sup> October 1986 to 7<sup>th</sup> September 1999 is irregular. As such, recovery of House Rent Allowance from the Defence Civilian employees w.e.f. 1<sup>st</sup> October 1986 to 7<sup>th</sup> September 1999 to be initiated against the individual concerned after issuing show cause notice.

The photocopy of letter dated 16<sup>th</sup> October 2001 and CDA Patna DO letter No. DPA/1/017/XIV dated 31<sup>st</sup> July 2001 are annexed hereunto and marked as ANNEXURE-A.

4.5— That your Applicants beg to state that the Office of the Respondent No. 2 vide their letter dated 15<sup>th</sup> November 2001 requested all Army units including 181 Military Hospital regarding detailed payment of House Rent Allowances and Compensatory Field Area Allowances to Defence Civilians posted in newly defined Field Area.

The Photocopy of the letter dated 15<sup>th</sup> November 2001 is annexed hereunto and marked as ANNEXURE- B

4.6 That your Applicants beg to state that the Office of the Respondent No. 2 vide their letter No. 3537/R/M-3 dated 17<sup>th</sup> April 2005 enclosing the CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 7<sup>th</sup> March 2005 requested the Respondent No. 7 i.e. 181 Military Hospital C/o 99 APO to provide necessary information regarding payment of House Rent Allowances to the Defence Civilians.

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The Photocopy of letter No. 3537/R/M-3 dated 17<sup>th</sup> April 2005 issued by the HQ 5 Mountain Division C/o 99 APO is annexed hereto and marked as ANNEXURE- C.

4.7 That your Applicants beg to state that the Respondent No. 7 i.e. the 181 Military Hospital C/o 99 APO vide their letter No. 712/Estd./05 dated 21 May 2005 addressed to 5 Mountain Division (Med) Pin-906405 C/o 99 APO submitted details of payment of House Rent Allowances to the Defence Civilians. It is to be stated that in the details of information the Respondent No.7 has stated that 181 Military Hospital C/o 99 APO has paid House Rent Allowances to the forty-four Defence Civilians w.e.f. 1<sup>st</sup> October 1986 to 7<sup>th</sup> September 1999 and also stated that the said amount can be recovered from individual salary.

The photocopy of Letter No.712/Estd./05 dated 21 May 2005 issued by the 181 Military Hospital C/o 99 APO is annexed hereto and marked as ANNEXURE-D.

4.8 That your Applicants beg to state that the Respondent No. 4 i.e. the Controller of Defence Accounts, Narengi Guwahati vide their letter No. Pay/6/HRA/CCA/VI dated 02-04-2007 addressed to Respondent No. 3 i.e. the Controller General of Defence Accounts, New Delhi has stated that the 181 Military Hospital C/o 99 APO has agreed to recover the over payment of House Rent Allowance from per individual amounting Rs. 28, 581/- (Rupees Twenty eight thousand five hundred eighty one) only. The copy of the said letter was also sent to Respondent Nos. 6 and 7. They were requested to start recovery of over paid amount through the pay bill under preparation and to monitor the case vigorously until its finality. Moreover, the Controller of Defence Accounts, Narengi, Guwahati vide their letter dated 22-05-2007 directed the Respondent No. 7 to intimate regarding action of the same. As per the said direction the Respondents have started to recover House Rent Allowance from the instant Applicants w.e.f. 1<sup>st</sup> October 1986 to 7<sup>th</sup> September 1999 without any prior notices. Hence finding no other alternative your

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Applicants are compelled to approach this Hon'ble Tribunal for seeking justice in this matter and also with a prayer for an interim order not to recover the House Rent Allowance from the Applicants w.e.f. 1.10.1986 to 07.09.1999 till disposal of this case.

The photocopy of the letter No. Pay/6/HRA/CCA/VI dated 02-04-2007 issued by the Controller of Defence Accounts, Narengi, Guwahati is annexed hereunto and marked as ANNEXURE-E.

The photocopy of the letter dated 22-05-2007 issued by the Controller of defence Accounts, Narengi, Guwahati, is annexed hereunto and marked as ANNEXURE- F.

4.9 That your applicant begs to state that the recovery of House Rent Allowance was initiated by the Respondent No.2 since 16.10.2001 in pursuance of the letter dated 31.07.2001 issued by the CDA, Patna i.e., Respondent No.5. in the said letter it is also made clear that recovery will be initiated after show cause to the individual concerned. However, in the instant case, the Respondents have started recovery of the House Rent Allowance from the Applicants from the month of June, 2007 onwards without issuing any show cause notice to the Applicants. Moreover, the recovery order was issued after six years of initiation of recovery process by the Respondents themselves. The impugned orders No.PAY/6/HRA/CCA/VI dated 02/04/2007 and dated 22.05.2007 have been issued by the Respondent No. 3 and 4 without providing any opportunity to the Applicant to defend themselves. Therefore, the impugned orders are liable to be set aside and quashed only on the ground of total violation of principles of natural justice.

4.10 That your Applicants beg to state and submit that the House Rent Allowance w.e.f. 1.10.1986 to 07.09.1999 was paid by the Respondent Authorities not on the misrepresentation of the Applicants but on their own. The said amount has already been spent by the Applicants for maintaining their family members. They have

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not obtained the said Allowance fraudulently or forcefully, rather the allowance was paid to the Applicants by the Respondents themselves. The present Applicants cannot be held responsible since they have no hand in the matter of sanction or discontinuation of the said allowance. It will cause great financial hardship to the Applicants if the same is allowed to be recovered from the Applicants.

4.11 That your Applicants beg to state and submit that the said House Rent Allowance was received by the Applicants from 1986 i.e., more than twenty years back. Now, the Respondents cannot take advantage by issuing the impugned recovery order. Moreover, the process of recovery was started six years back and the Respondents were totally silent for all these long years. Hence, the impugned recovery orders are not sustainable in the eyes of law. As such, the same are liable to be set aside by this Hon'ble Tribunal.

4.12 That the impugned action on the part of the Respondents Authorities in issuing the recovery of House Rent Allowance has the effect of meting out arbitrary treatment to the Applicants and further subjecting the Applicants to malafide exercise of power by the Respondent Authorities, the rights of the Applicants guaranteed under Articles 14, 16 and 21 of the Constitution of India have been infringed with.

4.13 That your Applicants demanded justice and the same has been denied.

4.14 That this application is filed bonafide and for the cause of justice.

#### 5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, due to the above reasons and facts, which are narrated in details, the action of the Respondents is prima facie illegal, malafide, arbitrary and without justification. As such the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

5.2 For that, the Respondent Nos.2 & 5 in their communications dated 16.10.2001 and 31.07.2001 respectively have directed the authority concerned to issue show cause notice to the Applicants before initiating recovery of House Rent Allowance. However, the Respondent Nos.3, 4 & 7 flouting the above instructions have started recovery of the House Rent Allowance. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

5.3 For that, the impugned orders are issued without providing any opportunity to the Applicants and no show cause notice, whatsoever, was issued to the Applicants before starting recovery of the House Rent Allowance. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are hit by the principles of natural justice. Therefore, the impugned orders are not sustainable in the eyes of law.

5.4 For that, the Applicants did not commit any fraud and misrepresentation in obtaining the said House Rent Allowance. As such, the Respondents are not entitled to recover the same from the Applicants for no fault of their own. Therefore, the impugned order PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

5.5 For that, the action on the part of the Respondents for recovery of House Rent Allowance after more than 20 (twenty) years and also in initiation of the process for last six years is also not sustainable in the eyes of law. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

5.6 For that, being a model employer the Respondent cannot take advantage of its dominant position over the Applicants in recovering the House Rent Allowance from the poor Applicants. As such, the impugned order Nos. PAY/6/HRA/CCA/VI dated 02/04/2007 and

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PAY/6/HRA/CCA/VI dated 22.05.2007 are not maintainable and therefore, liable to be set aside and quashed.

5.7 For that, the Applicants have already spent the entire amount in maintaining their families. If the Respondents are allowed to recover the House Rent Allowance drawn during the period from 1.10.1986 to 07.09.1999, i.e, for almost 13 years, the poor Applicants (Group-D) will suffer huge financial hardship for no fault of their own. Therefore, the impugned orders recovering the House Rent Allowance drawn from 1986 onwards to 1999 are bad in law. As such, the impugned orders PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 are liable to be set aside and quashed.

5.8 For that, the action of the Respondents in recovering the House Rent Allowance is arbitrary, malafide, illegal and with illmotived. Therefore, the impugned orders are liable to be set aside and quashed.

5.9 For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law.

The Applicants crave leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

#### 6. DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious and remedy available to the Applicants except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

#### 7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

That the Applicants further declare that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

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8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above, the Applicants most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relief (s) : -

- 8.1 That the Hon'ble Tribunal may be pleased to set aside and quash the impugned office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 passed by the Respondent No.3 and PAY/6/HRA/CCA/VI dated 22.05.2007 passed by the Respondent No.4.
- 8.2 That the Hon'ble Tribunal may be pleased to direct the Respondents to refund the House Rent Allowance which has already been recovered from the Applicants.
- 8.3 To Pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by this Hon'ble Tribunal.
- 8.4 To pay the costs of the application.

9. INTERIM ORDER PRAYED FOR :

During the pendency of this application, the Applicants most respectfully pray for the following relief : -

- 9.1 That the Hon'ble Tribunal may be pleased to stay the operation of the impugned orders issued under office order No. PAY/6/HRA/CCA/VI dated 02/04/2007 and PAY/6/HRA/CCA/VI dated 22.05.2007 till disposal of this Original Application.

MADHU

10. THIS APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF I.P.O.

I.P.O. No. :- 346654295

Date of Issue :- 12-06-2007

Issued from :- Guwahati G.P.O

Payable at :- Guwahati.

12. LIST OF ENCLOSURES:

As stated in index.

Verification .....

M9-040

### VERIFICATION

I, Smti Madhumati Thapa, Wife of Shri Jang Bahadur Chetri, P No. 484679, Office of the Commanding Officer 181 M H C/o 99 APO do hereby solemnly verify and declare that I am the Applicant No. 1 of the instant Original Application and I am duly authorized by the other Applicants to sign this verification.

That the statements made in paragraph nos. 4.1 to 4.3, 4.9 to 4.14 are true to my knowledge, those made in paragraph nos. 4.4 to 4.8 are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 1<sup>st</sup> day of August 2007 at Guwahati.

  
DECLARANT

ANNEXURE- A

(Typed Copy)

•505 ASC Bn IIQ 5 Mtn. Div  
181 M H C/o 99 APO  
5 Mtn DOU  
238 Transit Camp 16 Oct 2001  
GE 859 EWS  
384 Coy ASC (SUP)  
482 Coy ASC (SUP)  
Stn HQ Tenga

PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALLCES TO  
DEF CIVILIANS POSTED IN NEWELY DEFINED FD AREAS.

1. A copy of CDA Patna DO letter No. PA/1/017/XIV Dt. 31 July 2001 on the subject is fwd herewith.
2. It has been intimated by CDA Patna that Def. Civs. Posted to field areas are entitled to HRA provided they are not retaining accn. at previous duty station and not provided with Government Accn. in the newly defined field areas. Vide GOI, MOD letter 4(2)/99- D(Civ-1) dated 8<sup>th</sup> Sept. 1999 the provisions of payment of HRA. To Def. Civs. employees was w.e.f. 8<sup>th</sup> Sept. 1999. However, on a number of cases Def Civs. have been paid HRA from 1<sup>st</sup> Oct. 1986 to 7<sup>th</sup> Sept. 1999 which is irregular. ✓
3. In this connection, the following information is to be furnished by the units finn. for in modified field areas in order to work out over payment: -
  - a) The number of employees who have been admitted HRA w.e.f. 1<sup>st</sup> Oct. 1986 and subsequent dates depending upon the date of posting to modified field areas, who have not been retaining the Family Accn. at the old duty station.
  - b) The number of employees who have been admitted HRA w.e.f. 1<sup>st</sup> Oct. 1986 and subsequent dates depending upon the dates posting to modified field areas, who have not been retaining the Family Accn. at the old duty station.
4. Compensatory Field Area Allowances (CMFAA) has been paid to Def. Civs. serving in the modified field areas which has also been viewed as →

**ATTESTED**

*B. Bhatia*  
ADVOCATE

irregular as the provision of GOI, MOD letter No. 37269/AG/PS-3(a)/90 (Pay/Services) dated 13 Jan. 1994 were only applicable to Army pers.

5. In view of the foregoing, you are requested to examine both the case in detail and issue necessary instruction to concerned units/ firms. to work out the details of the amount paid to Def. Civs. On account of HRA prior to 8<sup>th</sup> Sept. 1999(i.e. 1<sup>st</sup> Oct. 1986 to 07 Sept. 1999) and also compensatory modified field area allowances paid after 13<sup>th</sup> Jan. 1994 and initiate recovery action after issue of show cause to the individual concerned.
6. Please fwd. A feed back by the 22 Oct. 2001 positively.

**ATTESTED**

*Bhatta*  
**ADVOCATE**

(Typed Copy)

Copy of CDA Patna DO letter No. PA/1/017-XIV dated 31 July 2001

This is regarding payment of IIRA and compensatory Modified Field Area allowance the civilians posted in newly defined Field Areas.

In this connection I am to state that in terms of Para 2 of Govt. of India Min. of Defence letter No. 4(2)/99D(Civ-1) dt. 08 Sept. 1999, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt. accommodations at peace duty station with reference to Govt. of India, Min. of Defence letter No ibid dt. 02 March 68 and are not also provided with Govt. Accommodations in the newly defined Field Area. Now it has been observed by our HQrs. Office (CGDA) that the order of Min. of Defence does not contemplate payment of HRA at the duty station in modified Field Areas prior to 08 Sep. 1999. It has also been pointed out by our HQrs. Office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min. of Fin. Letter No 13-02-86-E-II(B) dt. 23<sup>rd</sup> September 1986. Therefore the payments of HRA prior to 08 Sep. 1999 (i.e. from 01 Oct. 1986 to 07 Sep 1999) have been viewed as irregular.

In this connection the following information is to be furnished by the units/formations located in Modified Field Areas in order to work out over payments.

- (i) The number of employees who have been admitted HRA w.e.f. 01 Oct. 86 and subsequent dates depending upon the date of posting to modified Field Area who had not been retaining the family accommodation at the old duty station.
- (ii) The number of employees who have been admitted HRA w.e.f. 01 Oct. 86 and subsequent dates depending upon the date of posting to modified Field Area who had not been retaining the family accommodation at the old duty station.

It is further added that compensatory Modified Field Area Allowance (CMFAA) has been paid to Defence Civilian serving in Modified Field Area which have also been viewed as irregular as the provisions of Govt. of India, Min. of Defence letter No. 37269/AC/PS 3(a)/90 (Pay/Services) dt. 13 Jan 94 was only

**ATTESTED**

*Bhatte*

**ADVOCATE**

applicable for Army Personnel. As an instant case the unauthorized payments of Modified Field Areas Allowance which was made to the civilians of GE EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQ and issue necessary instructions to concerned units/ formations to work out the details of the amounts paid to Defence Civilians on account of HRA prior to 08 Sept. 1999 (i.e. 01 Oct. 86 to 07 Sept. 99) and also compensatory Modified Area Allowance paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a position to identify the units/ formations where such irregular payments have been made in spite of our best efforts made in this regard.

Sd/-.

**ATTESTED**

*Abhaya*  
ADVOCATE

1962 13 PEGN 32

18 Oct 1967

505 ASC BN  
181 M4  
5 Mtn DOU  
238 Transit Camp  
GE: 859 EWS  
384 COY ASC (Sup)  
482 COY ASC (Sup)  
STN HQ Tengaa

PERIOD OF THIS EDITION IS UNKNOWN. THIS IS NOT A  
RECENT EDITION. THIS IS A REPRINT OF AN OLD EDITION.

**ATTESTED**

Shatto  
**ADVOCATE**

111

This is regarding payment of HRA and compensatory Modified Field Area allowance (the civilians posted in newly defined Field Areas).

In this connection I am to state that in terms of para 2 of Govt of India, Min of Defence letter No 400/290(civ-1) dt 08 Sep 99, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt accommodations at posts duty stations with reference to Govt of India, Min of Defence letter ibid dt 02 Mar 86 and it is also provided with Govt accommodation in the newly defined field Area. However it has been observed by our HQs Office that in the order of Min of defence does not contemplate payment of HRA at the duty station in Modified Field Areas prior to 08 Sep 99. It has also been pointed out by our HQs office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min of Fin. letter No 13-02-B6-E-11(B) dt 22 Sep 95. Therefore the payments of HRA prior to 08 Sep 99 (ie from 01 Oct 86 to 07 Sep 99) have been viewed as irregular.

In this connection the following information is to be furnished by the units/ formations located in Modified Field Area in order to work out over payments.

- (i) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon the date of posting to modified Field areas who have not been retaining the family accommodation at the old duty station.
- (ii) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon that date of posting to Modified Field Areas, who have not retained the family accommodation at the old duty station.

It is further added that compensation Modified Field Area Allowance (CMFAA) has been paid to Defence Civilians serving in Modified Field Area which have also been viewed as irregular in the provisions of Govt of India, Min of Def letter No 37269/AC/PSS(a)/20 (Pay/Services) dt 11 Jun 94 was only applicable for Army Personnel. As an instant case the unauthorised payments of Modified Field Area Allowance which was made to the civilians of GE 867 EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQs and issue necessary instructions to concerned units/ formations to work out the details of the amounts paid to Defence Civilians in account of the above to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also to make them to Modified Field Area Allowance paid after 08 Sep 99 and take the recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a position to identify the units/ formations where such irregular payments have been made irrespective of our best efforts made in this regard.

**ATTESTED**

*Bhatte*  
**ADVOCATE**

11-10-2000

W.M.D.

-23-

HQ 5 Mtn Div  
C/O 99 APO

**ANNEXURE - B**

15 Nov 2001

A2

105 ASC Bn  
482 Coy ASC (Sup)  
181 Mil Hosp  
GE B59 EWS

**PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALLOCES  
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS**

1. Ref our letter No 7703/A2 dt 16 Oct 2001 and your replies  
thereon.

2. You are requested to find the details as per annex sub to this  
letter by 17 Nov 2001.

  
(Virendra Rawat)  
Lt Col  
AAG  
for Col Adm

EMCL : As above.

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**ATTESTED**  
Bhatte  
**ADVOCATE**

PAYMENT OF DUTY STATION HRA MADE TO DEFENCE CIVILIAN IN MODIFIED FIELD AREA  
PRIC TO 08 SEP 1998

SAC	Name of Unit	Individual with particulars to know-duty station HRA was paid prior to 08.09.99	Place from where posted	Period from which such payment is being made	Whether individual is retaining Govt accommodation at old duty station in peace area.	Fiscal amount HRA paid upto 7.9.99	Remarks

**ATTESTED**  
*Abhette*  
**ADVOCATE**

ANNEXURE- C

(Typed Copy)

3537/R/M-3

IIQ 5 Mtn. Div.

181 M H

Pin-908405

C/o 99 APO

C/o 99 APO

17<sup>th</sup> April 2005

PAYMENT OF Fd. SERVICE CONCESSION

DUTY STATION HRA TO DEF.CIV.

A Copy of CDA Guwahati letter No. PAY/6/HRA/CCA/V dated 07<sup>th</sup> March 2005 on the above subject is fwd. Herewith for your further necessary action please.

Sd/-

( T.S. Ramakrishnan)

Major

DADII

For ADMS

Encls. As above

Copy of CDA Ghy Letter No. Pay/6/HRA/CCA/V dt. 07<sup>th</sup> March 2005.

/As above/

Payment of HRA to Defence Civilians Serving in operational areas and even to those retaining Govt. Accn. at old peace duty station since Oct. 1986 is not in keeping with the Government orders. The matter has been examined in details in MOD (FIN) and Ministry of Finance necessary construction may please be issued to all concerned to stop payment of HRA to those defence Civilians who are serving in operational area and retaining Govt. Accn. at old peace duty station immediately.

However the following information may please be furnished on priority for taking up the matter with MOD by CGDA New Delhi.

1. Number of units involved.

**ATTESTED**

*A. Bhattacharya*

**ADVOCATE**

2. Number of individuals who have been admitted HRA prior to 08.09.1999 in the modified field area.
3. Total Financial Implication in this regard.
4. Period of overpayment on account of HRA in modified field areas.
5. Views whether recovery of HRA can be made from the salaries of the individual under the order of CFA.

An immediate reply would be highly appreciated

Sd/-

(C.Zothankhuma)  
Joint Controller

**ATTESTED**

*S. Shatto*  
ADVOCATE

ANNEXURE- D

(Typed Copy)

712/Estd/05

181 M II

5 Mtn. Div. (Med)

C/o 99 APO

Pin-908405

C/o 99 APO

21 May 2005

PAYMENT OF Fd. SERVICE CONCESSION  
DUTY STATION HRA TO DEFENCE CIVILIANS.

1. Ref your IIQ letter No. 37/R/M-3 dt.17 April 2005
2. The requisite information on the subject as asked vide your letter under ref. is submitted as under for your further necessary action please.
  - a) Number of units involved- One (181 M II C/o 99 APO)
  - b) Number of individuals who have been admitted HRA prior to 08-09-99 in Modified Field Area – Forty four.
  - c) Total financial implication in this regard- Rs. 3,67,128/- (Three Lakhs Sixty Seven Thousand One hundred Twenty Eight) only.
  - d) Period of over payment on account of HRA in the modified field areas - 01 Oct. 1986 to 07 Sept. 1999.
  - e) Views recovery of HRA can be made- Yes from the salaries of the individual under the order of CFA.

Sd/-

(Y.R. Raina)

Major

Administrative Officer.

**ATTESTED**

*R. Shette*

**ADVOCATE**

-28- ~~Speed post~~  
No. PAY/6/HRA/CCA/VI  
O/o THE CDA,  
"Udayan Vihar", Narangi,  
Guwahati- 781171.  
Dated: -02/04/2007.

ANNEXURE-- E

To,

The C.G.D.A.  
West Block - V,  
R.K. Puram,  
New Delhi -66.

Sub: Field Service Concession (Duty station HRA) to Defence  
Civilians in Defence operational area.

Ref: HQs office letter no. AT/II/2366/FSC-XII dated 11/12/2006.

In this connection it is stated that the matter was referred to 181 Military Hospital, C/O 99 APO for recovery of overpayment of HRA and they have agreed to affect recovery.

Out of the total individuals three of them have expired and the recovery amount due comes to Rs 28581/-. For this the executive authority will have to initiate action to write off the amount. Further communication on the above issue will be communicated on receipt of information from 181 Military Hospital and AAO Shillong please.

CDA has seen.

4/1  
50/-  
(P.R. Biswas)  
DCDA (Pay)

Copy to,

Registered

1. The C.O.  
181 Military Hospital  
C/O - 99 APO.  
  
2. AAO Shillong,  
Bivar Road,  
Shillong - 01

With reference to his letter no. 711/ESTT/2007 dated 11/01/2007, he is requested to start recovery of the over paid amount through the pay bill under preparation.

He is also requested to monitor the case vigorously until its finality.

11/04/2007  
(P.R. Biswas)  
DCDA (Pay)

**ATTESTED**

Bhattacharya  
ADVOCATE

ANNEXURE- F

(Typed Copy)

Speed Post

No. PAY/6/IIRA/CCA/VI

O.O. the CDA, Guwahati

Narengi, Guwahati-171

Dated 22.5.2007

To,

The Commanding Officer  
181 Military Hospital  
C/o 99 APO

Sub:- Field Serving Concession (Duty Station IIRA) to Defence Civilians in  
Defence Operational Area

Ref:- Your Office letter No. 711/ESTT/2007 dated 11.01.2007 and this office  
letter no. PAY/6/IIRA/CCA/VI dated 02.04 2007

Please intimate regarding action taken to write off or otherwise the  
amount of Rs. 28,581.00 (Para 2(a) of your letter refers).

It may also please be intimated as regards Para 2 (b) in respect of  
individuals who transferred out for Rs. 30,813.00 and Para (b) of your letter  
in respect of individuals serving in your office for Rs. 3,07,734.00 at an  
early date.

The case may please be looked into at your level and furnish the  
reply through 'Fax' so that the position can be appraised accordingly to our  
HQr. Office, New Delhi.

Sd/-

Sr. Accounts Officer (Pay).

**ATTESTED**

*Bhatter*  
ADVOCATE

11. MAY/6/IIRA/CCA/VI  
 D. O. T. H. C. D.A., Gurdaspur  
 Muzamji, Gurdaspur. 171  
 Date 10. 5. 2007.

Re:

The Commanding Officer  
 181 Military Hospital  
 c/o 99 A.R.O.

**ANNEXURE-- F**

Subj: Field Service Concession (Duly Section IIRA) to  
 Defence Civilians in Defence Operational area.

Reff: Your office letter no. 711/ESTT/2007 dated  
 11.01.2007 and this office letter no. PAY/6/IIRA/CCA/  
 VI dated 02.04.2007. x

Please intimate regarding action taken to write off  
 or otherwise the amount of Rs. 18,581.00 (Para 2(a) of your  
 letter refers).

It may please be intimated as regards para 2(b)  
 in respect of individuals who transferred out for Rs. 30,813.00  
 and para (b) in respect of individuals serving in your office  
 for Rs. 3,07,734.00 at an early date.

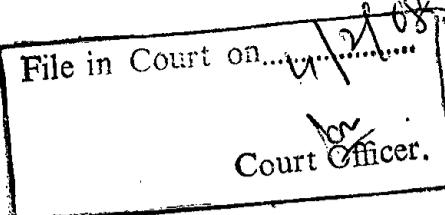
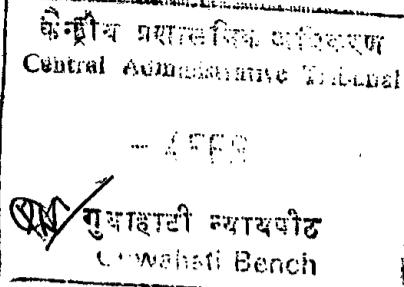
The case may please be looked into at your level  
 and furnish the reply through fax so that the position can  
 be apprised accordingly to our H.Q. office, New Delhi.

1986 to 1999

After 7 years  
 without notice

**ATTESTED**  
 Bhatte  
 ADVOCATE

Mr. Accounts Officer (Pay)



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

Title of the case : OA No 204 of 2007

BETWEEN  
Smti. Madhumati Thapa & others ..Applicants.  
AND

UNION OF INDIA & ORS .....RESPONDENTS

**WRITTEN STATEMENT SUBMITTED BY THE RESPONDENTS**

**I N D E X**

Sl No.	Particulars	
Page No.		
1.	Written statement	1-4
2.	Verification	5
3.	Annexure-1	6,7
4.	Annexure-2	8
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7.	Annexure-5	11,12
8.	Annexure-6	13, 14
9.	Annexure-7	15
10.	Annexure-8	16

Filed by : *Usha Das*  
Miss Usha Das  
Addl CGSC

Date : 04/02/08

Recd 6/2/2008  
Advocate 6/2/2008  
Usha Das

**গুৱাহাটী প্রত্যৰ্থী  
Guwahati Bench**  
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**

**IN THE MATTER OF**

OA NO. 204/2007

Smti. Madhumati Thapa & others

..... Applicants

- Versus -

### Union of India & Others

### ..... Respondents

-AND-

**IN THE MATTER OF**

**Written Statement submitted by the Respondent No 1 to 7**

## WRITTEN STATEMENT:

**The humble answering respondents submitted their**

**Written statement as follows:**

1 (a) That I am ..... Colonel ..... Vinay Lal, ..... aged ..... about 51 years  
Commanding Officer, 181 Military Hospital  
..... C/o 99 A.P.O ..... and respondent No ..... 7 ..... in the  
above Case. I have gone through a copy of the application served on me and have  
understood the contents thereof. Save and except whatever is specifically admitted in this  
written statements, the contentions and statements made in the application and  
authorized to file the written statement on behalf of all the respondents.

- (b) The application is filed unjust and unsustainable both facts and in law.
- (c) That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.
- (d) That the application is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.

*Aug 1*  
(Vinay Lal)  
Colonel  
Commanding Officer

Recomm'd Copy  
J.S. -  
Adams  
6.2.2008

(e) That any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicants had suffered from vice of illegality.

2) That with regard to the statement made in paragraphs 1, 2, 3, 4, 4.1, 4.2 and 4.3 of the OA, the answering respondents do not admit anything except those are based on records. The applicant is put to the strictest proof thereof.

3) That with regard to the statement made in paragraph 4.4 of the OA, the answering respondents beg to submit that the payment of HRA to Defence Civilian of this unit was admitted in terms of Ministry of Finance letter No. 13-02-86-E-II dated 23 September 1986 prior to 08 September 1999 i.e for the period from 01.10.1986 to 07.09.1999, the same had been viewed irregular by the office of the CGDA and the intimation to this effect was communicated vide CDA Patna DO letter No. PA/1/017/XIV dated 31.7.2001 received through HQ 5 Mtn Div 'A' letter No. 7703/A2 dated 16.10.2001. The authority of admissibility of house rent in this station prior to 08.1999 has not found in this office.

Copies of the letter dated 23.9.1986, 08.9.1999, 31.7.2001 and 16.10.2001 are annexed herewith and marked as Annexure -1, 2, 3 and 4 respectively.

4) That with regard to the statement made in paragraph 4.5 of the OA, the answering respondents beg to submit that the details of payment of HRA paid w.e.f 01.10.1986 to 07.9.1999 were sought through HQ 5 Mtn Div (A) vide their letter No. 7702/A2 dated 15.11.2001 and the same were submitted vide this office letter No. 711/Est/2001 dated 17.11.2001.

Copies of the letter dated 15.11.2001 and 17.11.2001 are annexed herewith and marked as Annexure-5 and 6 respectively.

  
(Vinay L. J.)  
Colonel  
Commanding Officer

5) That with regard to the statement made in paragraph 4.6 of the OA, the answering respondents beg to submit that HQ 5 Mtn Div (Med) vide their letter No. 3537/R/M-3 dated 17.4.2005 circulated CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 07.3.2005 stating to furnish the details of HRA paid to Defence Civilian employees serving in operational areas and even to those retaining Govt accommodation at old peace duty station since October 1986 as the same is not keeping with the Govt. orders. The details information was submitted to HQ 5 Mtn Div (Med) vide this hospital letter No. 711/Est/2005 dated 21 May 2005.

Copies of the letter dated 07.3.2005, 17.4.2005 and 21.5.2005 are annexed herewith and marked as Annexure-7, 8 and 9 respectively.

6) That with regard to the statement made in paragraph 4.7 of the OA, the answering respondents beg to submit that this hospital has to submit views under which recovery of the over payment of House Rent allowance w.e.f. 01.10.1986 to 07.9.1999 can be made, as there is no other way to make the recovery over payment of HRA. The respondents have agreed to recover the over payment of HRA through salaries as asked under CDA Guwahati letter No. Pay/6/HRA/CCA/V dated 07.3.2005.

7) That with regard to the statement made in paragraph 4.8 of the OA, the answering respondents beg to submit that this hospital has to follow the instruction, which are given by the HQs, and as per CDA Patna DO letter No. PA/1/017/XIV dated 31.7.2001 received through HQ 5 Mtn Div 'A' letter No. 7703/A2 dated 16.10.2001, stated that the House Rent allowance paid prior to 08.09.1999 has been viewed irregular by the higher authorities.

8) That with regard to the statement made in paragraph 4.9 of the OA, the answering respondents beg to submit that the recovery of House Rent Allowance was initiated since 16.10.2001. Due to administrative reasons recovery could not be started. Then a copy of the CDA letter No. PAY/6/HRA/CCA/V dated 07.3.2005 received vide HQ 5 Mtn Div (Med) letter No. 3537/R/M-3 dated 17.3.2005 seeking the information of the over payment of House Rent allowance. This Hospital has forwarded the information to HQ 5 Mtn Div (Med) this hospital letter No. 711/Est/2005 dated 21 May 2005.

  
(Vinay Lal)  
Colonel  
Commanding Officer

This information then forwarded to the office of the CDA Guwahati vide HQ 5 Mtn Div (Med) letter No. 3537/2/M-3 dated 25.5.2005.

That with regard to the statement made in paragraphs 4.10 and 4.11 of the OA, the answering respondents beg to offer no comment.

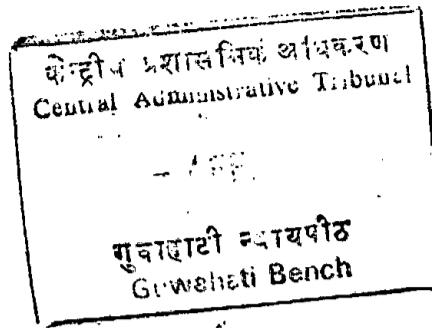
9) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents beg to submit that this hospital has forwarded the details of the over payment of the House Rent allowance time to time as asked for and followed the instructions directed by the Higher authorities. In this case no arbitrary treatment to the applicants or malafide exercise of the power has been by the authorities. However for the convenient of the Civilian employees of this hospital, the recovery of the over payment has been made in installments.

10) That with regard to the statement made in paragraphs 4.13 and 4.14 of the OA, the answering respondents beg to offer no comment.

11) That the answering respondents submit that in view of the facts and circumstances of the case and the submissions made above, the application is devoid of any merit and without any rational/legal foundation and as such liable to be rejected/dismissed with costs for the ends of justice and equity.

  
(Vinay Lal)  
Colonel  
Commanding Officer

5  
VERIFICATION



I.....Colonel Vinay Lal....., aged  
about 51 years at present working as  
...Commanding Officer, 1 & 1 Military Hospital  
e/o 99 AP, who is one of the respondents and taking steps in this case, being  
duly authorized and competent to sign this verification for all respondents,  
do hereby solemnly affirm and state that the statement made in paragraph

1, 2, 12 are true

to my knowledge and belief, those made in paragraph

3 to 11 being matter of records, are

true to my information derived there from and the rest are my humble  
submission before this Humble Tribunal. I have not suppressed any material  
fact.

And I sign this verification this 28th day of January 2008 at

---  
\_\_\_\_\_  
DEPONENT  
(Vinay Lal)  
Colonel  
Commanding Officer

(Copy)

Appt. No. 11013/2/86-E.II(B)  
Letter No. 105/A dated

Annexure-1

No 11013/2/86-E.II(B) ab  
Govt of India,  
Ministry of Finance,  
(Department of Expenditure),  
New Delhi,  
the 23 September 1986.

## OFFICIAL HEADQUARTERS

Subject: RECOMMENDATION OF THE FOURTH PAY COMMISSION  
RECOMMENDATION OF GOVT RELATING TO GRANT OF COMPENSATORY (CITY) AND HOUSE RENT ALLOWANCES TO  
CENTRAL GOVT EMPLOYEES.

केन्द्रीय प्रशासनिक अधिकारा  
Central Administrative Library

- 4569

गुरुहाटी द्वायपीठ  
Guruhati Bench

The undersigned is directed to say that, consequent on the decision taken by the Govt on the recommendations of the Fourth Pay Commission relating to the above mentioned allowances vide this Min's Resolution No 14(1)/L/13 dated 13 Sep 86, the President is pleased to decide that in modification of this Ministry's OM No F-2(37)-E.II(B)/ dated 27.11.1965 as amended from time to time, Complementary (city) and House Rent Allowances to Central Govt employees shall be admissible at the following rates :-

## (1) COMPENSATORY (CITY) ALLOWANCE

Pay Range Basic pay	Amount in GDA in class of Cities (Rs pm)		
	A	B1	B2
Below Rs 950/-	30	35	20
Rs 950 and above but below Rs 1500/-	45	55	20
Rs 1500/- and above but below Rs 2000/-	75	50	20
Rs 2000/- and above	100	75	20

Note:- For 14 special localities where GDA at the rate applicable to B-2 city are being paid, fresh orders will be issued separately.

## (2) HOUSE RENT ALLOWANCE

Type of accommodation to which entitles	Pay range in revised scales of pay for entitlement	Amount of HRA payable in (Rs pm)				
		A	B1	B2	C	On-CI
1	2	3	4	5	6	7
1	750-946	150	70	30		
2	950-1499	250	120	50		
3	1500-2799	450	320	100		
4	2800-3599	500	300	150		

continued to be same  
copy  
Alsha Dan  
Add. Secy  
04/02/86

52  
All above rates shall be paid to all employees (either Govt provided with Govt owned/hired accommodation) without making them to produce rent/receipts. These employees shall, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing part rent. HRA at above rates shall also be paid to Govt employees living in their own houses subject to their furnishing a certificate that they are paying/contributing towards house property tax or maintenance of the house.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

Where HRA at 15% of pay has been allowed under special orders, the same shall be given as admissible in A, B-1 and B-2 class cities. In other cases covered by special order, HRA shall be admissible at the rate in 'C' class cities. In both these cases there shall be no super pay limit for payment of HRA.

मुख्यमंत्री कायदा वाली बैठक  
M.A.Y.D. Bench

The other conditions at present applicable for grant of HRA in cases of sharing of accommodation and other categories shall continue to be applicable.

Pay for the purpose of these orders, will be 'Pay' as defined in S.I.9(21)(a)(i). In the case of persons who continue to draw pay in the scales of pay which have been provided prior to 31-10-86 it will include, in addition to pay in the pre-revised scale, dearness pay, dearness allowance, and dearness allowance, as per DA and Interim Relief appropriate to that pay, admissible under orders in existence on 31-10-85.

These orders shall be effective from 01-10-86. For the period from 1.1.86, the above allowance will be drawn at the rates on the notional pay in the pre-revised scale.

These orders will apply to civilian employees of the Central Govt belonging to Gp 'B1', 'C' & 'D' only. The orders will also apply to the Gp 'B1', 'C' & 'D' Civilian employees from the Defence Service Estimates. In regard to Armed Forces personnel and Railway employees, separate orders will be issued by the Min of Def and Deptt of Railway respectively.

In so far as the persons serving in the Indian Audit and Accounts are concerned this order is subject to confirmation by the Controller and Auditor General of India.

English version of the same order is enclosed.

sd/- x x x x x x

certified to be same  
Mukta Das

Adarsh  
04/02/08

No 4(2)/99-D(Civ.I)  
 Government of India  
 Ministry of Defence

New Delhi, the 8 Sep 99

The Chief of the Army Staff

Subject : Field Service Concessions to Defence Civilians in  
 Defined Operational Areas.

Sir,

1. I am directed to refer to Government of India, Ministry of Defence letter No R/37269/AG/PS-3(a)/165/D(Pay/Services) dated 31.1.95 as amended vide this Ministry's Corrigendum No B/37269/AG/PS-3(a)/730/D(Pay/Services) dated 17.4.95 and No B/37269/AG/PS3(a)/1862/D(Pay/Services) dt 12.9.95 regarding Field Service Concessions/Modified Field Service Concessions in the newly defined Field Areas.
2. The defence civilian employees serving in the Modified Field Areas are entitled to concessions enumerated in Appx 'B' to Govt of India, Min of Defence letter No A/25761/AG/PS3(b)/146-S/2/D(Pay/ Services) dt 02.3.68. The matter regarding facilities/concessions of accommodation in respect of Defence civilians serving in the modified Field Areas has been under consideration in this Ministry. The President is pleased to decide that Defence Civilians serving in the Modified Areas who are not retaining Govt accommodation at old place duty station with reference to Govt of India, Ministry of Defence letter ibid dt 02.3.68 and are not also provided with Govt accommodation in the newly defined Modified Area, are entitled to draw HRA applicable for the place of their posting in the Modified Field Area subject to the conditions prescribed in Govt of India, Min of Finance O.M.O No F.2(37)-E-III(1)/64 dt 27 Nov 65. If, however, any modified Field Area is located in Kashmir Valley then the package announced by the Govt of India and circulated vide Ministry of Defence No 11(4)/90/D(Civ-II) dated 29.4.1998 and as extended from time to time or the concessions of Modified Field Area, whichever is more beneficial would be applicable.
3. This concession will be admissible from the date of issue this letter.
4. This is issued with the approval of Ministry of Finance vide their I.D. No 2(25)/99-E.II(B) dt 12.5.99 and with the concurrence of the Finance Division/AG of this Ministry vide their I.D. No 376/AG/PB dt 03.8.99.

CTC

*Vinay Lal*  
 (Vinay Lal)  
 Colonel  
 Commanding Officer

Sd/xxxxxx

केन्द्रीय प्रशासनिक अधिकारण  
 Central Administrative Tribunal

- 4 FEA

प्रदाहारी न्यायपोठ  
 Anti Bench

Copy of CDA Patna, DO letter No PA/1/017/-XIV dt 31 Jul 2001.

This is regarding payment of HRA and compensatory Modified Field Area allowance the civilians posted in newly defined Field Areas.

In this connection I am to state that in terms of para 2 of Govt of India, Min of Defence letter No 4(2)/99D(civ-1) dt 08 Sep 99, the Defence Civilians employed in Modified Field Areas are entitled to HRA provided they are not retaining Govt accommodations at peace duty station with reference to Govt of India, Min of Defence letter ibid dt 02 Mar 68 and are not also provided with Govt. Accommodation in the newly defined Field Area. Now it has been observed by our HQs Office (CGDA) that the order of Min of defence does not contemplate payment of HRA at the duty station in Modified Field Areas prior to 08 Sep 99. It has also been pointed out by our HQs office that HRA applicable in unclassified areas has been admitted in certain areas in terms of Min of Fin letter No 13-02-86-E-II(B) dt 23 Sep 86. Therefore the payments of HRA prior to 08 Sep 99 (i.e from 01 Oct 86 to 07 Sep 99) have been viewed as irregular.

In this connection the following information is to be furnished by the units/ formations located in Modified Field Area in order to work out over payments.

- (i) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon the date of posting to modified Field areas who have not been retaining the family accommodation at the old duty station.
- (ii) The number of employees who have been admitted HRA w.e.f 01 Oct 86 and subsequent dates depending upon that date of posting to Modified Field Areas who have ~~not~~ retained the family accommodation at the old duty station.

It is further added that compensatory Modified Field Area Allowance (CMFAA) has been paid to Defence Civilians serving in Modified Field Area which have also been viewed as irregular as the provisions of Govt of India, Min of Def letter No 37269/AC/PSJ(a)/90 (Pay/Services) dt 13 Jan 94 was only applicable for Army Personnel. As an instant case the unauthorised payments of Modified Filed Area Allowance which was made to the civilians of GE 667 EWS have come to our notice.

In view of foregoing, I would request you to get both the cases examined in detail by your HQs are issue necessary instructions to concerned units/ formations to work out the details of the amounts paid to Defence Civilians on account of HRA prior to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also compensatory Modified Field Area Allowance paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the individual concerned. It is also stated that this office is not in a position ~~to~~ identify the units/ formations where such irregular payments have been made inspite of our best efforts made in this

Central Army Board.

गुवाहाटी नायपीठ  
v. H Bench

CTC

QAB  
(Vinay Lal)

Colonel

Commanding Officer

Sd/- x x x xx

2.37A2

505 ASC Bn  
181 MH  
3 Mtn Bn  
238 Transit Camp  
GE 559 EWS  
384 Coy ASC (Sup)  
482 Coy ASC (Sup)  
Stn HQ Tenga

दोस्ती व प्रशासनिक अधिकारण  
Central Administrative Tribunal

- 150 -

HQ 5 Mtn Div  
c/o 99 APO

(3)

16 Oct 2001

गुवाहाटी न्यायपीठ  
Guwahati Bench

PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALICES  
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. A copy of CDA Patna, DU letter No PA/1/017/-XIV dt 31 Jul 2001 on the subject is fwd herewith.

2. It has been intimated by CDA Patna that def civs posted to fd areas are entitled to HRA provided they are not retaining accn at previous duty stn and not provided with Govt accn in the newly defined fd areas. Vide GOI, MOD letter A(2)/99-D(Civ-I) dt 08 Sep 99 the provision of payment of HRA to def civ employees was wef 08 Sep 99. However, on a number of cases def civs have been paid HRA from 01 Oct 86 to 07 Sep 99 which is irregular.

3. In this connection, the following info is to be furnished by the units/fms, loc in mod fd areas in order to work out over payments :-

(a) The number of employees who have been admitted HRA wef 01 Oct 86 and subsequent dates depending upon the date of posting to mod fd area, who have not been retaining the family accn at the old duty stn,

(b) The number of employees who have been admitted HRA wef 01 Oct 86 and subsequent dates depending upon the date of posting to mod fd areas, who have retained the family accn at the old duty stn.

4. Compensatory mod fd area alices (CMFAW) has been paid to def civs serving in mod fd area which has also been viewed as irregular as the provisions of GOI, MOD letter No 37269/AD/PS-3(a)/90 (Pay/Services) dt 13 Jan 94 were only applicable to Army pers.

5. In view of the foregoing, you are requested to examine both the cases in detail and issue necessary instrs to concerned units/fms to work out the details of the amount paid to def civs on acct of HRA prior to 08 Sep 99 (ie, 01 Oct 86 to 07 Sep 99) and also compensatory mod fd area alice paid after 13 Jan 94 and initiate recovery action after issue of show cause notice to the indl concerned.

6. Please fwd a feed back by 22 Oct 2001 positively.

OTC

L-46

(Vinay Lal)

Colonel  
Commanding Officer

(Enclosure : (As above))

  
(Virinder Rawat)  
Lt Col  
AAG  
for Col Adm

181 Mtn

Annexure - 5

HQ 5 Mtn Div  
C/o-99 APO

S/A2

15 Nov 2001

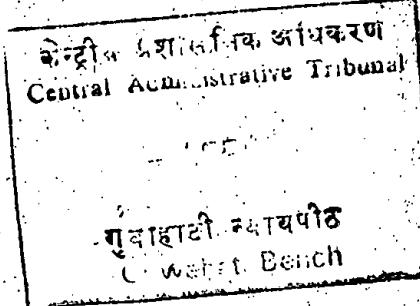
505 ASC Bn  
482 Coy ASC (Sup)  
181 Mill Hosp  
GE 859 EWS

15 Nov 2001

PAYMENT OF HRA AND COMPENSATORY MOD FD AREA ALLOCES  
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

1. Ref our letter No 7703/A2 dt 16 Oct 2001 and your replies thereon.
2. You are requested to fwd the details as per appx att to this letter by 17 Nov 2001.

Emcl : As above.



(Virendra Rawat)  
Lt Col  
AAG  
for Col Adm

CTC

*Copy*  
(Vinay Lal)  
Colonel  
Commanding Officer

दिल्ली राजस्व आदाय रेख  
Central Commissariat Tribunal

शुद्धार्थी नामांकित  
6. वाराणसी बैच

PAYMENT OF DUTY STATION H.R.A. MADE TO DEFENCE CIVILIANS IN MODIFIED FIELD AREA  
PRIC TO 08 SEP 1999

S/N	Name of Unit	Individual with particulars to whom duty station H.R.A. was paid prior to 08.09.99	Place from where posted which such payment is being made	Period from	Whether individual is retaining Govt accommodation at old duty station in	Total amount of H.R.A paid upto 7.9.99	Remarks
1							

C/C  
Vipay Lal  
(Vipay Lal)  
Colonel  
Commanding Officer

Armenia - 6

13 181 Military Hospital  
C/O 99 APO

7 Nov 2001

17 Nov 2001

HQ 5 Mtn Div 'A'  
C/O 99 APO

PAYMENT OF HRA AND COMPENSATORY MCD FD AREA ALICES  
TO DEF CIVILIANS POSTED IN NEWLY DEFINED FD AREAS

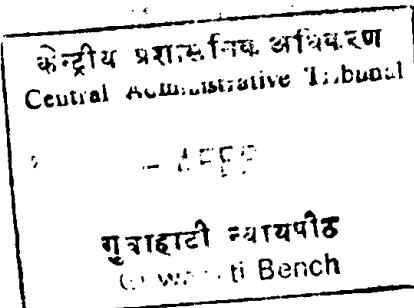
1. Ref your HQ letter No 7703/A2 dated 15 Nov 2001.
2. The requisite info on the above subject as asked for vide your HQ letter under ref is fwd herewith as per Appx att to this letter for your further necessary action please.

*JHC*  
(HC Bandhu)  
Lt Col  
Adm Officer  
For CO

Encls : One only.

Co's *✓*

*SL*



*C7C*

*L-af*

(Vinay L.I.)  
Colonel  
Commanding Officer

PAYMENT OF DUTY STATION HRA MADE TO DEFENCE CIVILIAN  
IN MODIFIED FIELD AREA PRIOR TO 08 SEP 1999

S.No	Name of unit	Individual with particulars to whom duty station HRA was paid prior to 08.09.99	Place from where posted	Period from which such payment is being paid	Whether individual is retaining Govt accommodation at old duty station in peace area	Total amount of HRA paid upto 7.9.99	Remarks
1.	181 MH, C/O 99 APC	W/SAH SMT P HAZARIKA	155 BH	01 Oct 86	NO	13,762.00	
2.	-do-	-do- SMT B LAMA	-do-	-do-	-do-	13,762.00	
3.	-do-	-do- SMT M BORUAH	-do-	-do-	-do-	10,738.00	
4.	-do-	+ F/SWPR SMT R DEVI	-do-	-do-	-do-	10,646.00	
5.	-do-	-do- SMT KIRAN BORA	-do-	-do-	-do-	10,426.00	
6.	-do-	-do- SMT MM THAPA	-do-	-do-	-do-	10,426.00	
7.	-do-	XMKK CHOWK SHRI B SINGH	Locally recruited	-do-	-do-	10,271.00	
8.	-do-	-do- SHRI PK GOPI	-do-	-do-	-	10,271.00	
9.	-do-	-do- SHRI KC GANGULLY	-do-	-do-	-	10,271.00	
10.	-do-	-do- SHRI AVTAR SINGH	-do-	-do-	-	10,271.00	
11.	-do-	-do- SHRI CB MISHRA	-do-	-do-	-	10,271.00	
12.	-do-	-do- SHRI DC BORA	-do-	-do-	-	10,271.00	
13.	-do-	MALI SHRI JB CHETTRY	-do-	-do-	-	10,271.00	
14.	-do-	MAZ SHRI PC BATH	-do-	-do-	-	10,271.00	
15.	-do-	CHOWK SHRI ANAND BORA	-do-	-do-	-	10,271.00	
16.	-do-	COOK SHRI DAMAR BAHADUR	-do-	-do-	-	10,482.00	
17.	-do-	-do- SHRI SAJAL PAUL	-do-	-do-	-	10,482.00	
18.	XMKK -do-	BARBER SHRI N THAKUR	-do-	-do-	-	10,482.00	
19.	-do-	-do- SHRI NK THAKUR	-do-	-do-	-	10,482.00	
20.	-do-	W/MAN SHRI SIV PRASAD	-do-	-do-	-	10,482.00	
21.	-do-	-do- SHRI MD FALAL	-do-	-do-	-	10,482.00	
22.	-do-	MSGR SHRI NURUP LAMA	-do-	01 MAY 92	-	7,664.00	
23.	-do-	-do- SHRI THONG JUNG	-do-	-do-	-	7,664.00	
24.	-do-	CHOWK SHRI SANGE KHANDU	-do-	-do-	-	7,664.00	
25.	-do-	-do- SHRI TASHI PHUNTSO	-do-	-do-	-	7,664.00	
26.	-do-	MAOSHRI JAPOH RANJE	-do-	-do-	-	7,664.00	
27.	-do-	-do- SHRI NAWANG TSERING	-do-	-do-	-	7,664.00	
28.	-do-	XMK F/SWPR SMT TE KHOCHILU	-do-	-do-	-	7,664.00	
29.	-do-	-do- SMT KHANDAMU	-do-	-do-	-	7,664.00	
30.	-do-	-do- MISS RINCHIN	-do-	-do-	-	7,664.00	
31.	-do-	COOK SHRI DAWA MERAKPA	-do-	-do-	-	7,880.00	
32.	-do-	W/SAH SMT KONJU DRCMA	-do-	-do-	-	7,880.00	
33.	-do-	-do- SMT LOBSANG	-do-	-do-	-	7,880.00	
34.	-do-	-do- SMT PASSANG	-do-	-do-	-	7,880.00	
35.	-do-	-do- SMT T REMA	-do-	-do-	-	7,880.00	
36.	-do-	SFWL SHRI GOVIND BAHADUR	-do-	01 JAN 97	-	4,244.00	
37.	-do-	-do- SHRI MK BORA	-do-	-do-	-	4,244.00	
38.	-do-	W/MAN SHRI UPENDER KUMAR	-do-	-do-	-	4,276.00	
39.	-do-	W/SAH SMT RUPALI	-do-	-do-	-	4,276.00	
40.	-do-	-do- MISS BALRANA RAI	-do-	-do-	-	4,276.00	
41.	-do-	LDC DILIP HAZARIKA	-do-	01 FEB 97	-	4,515.00	
42.	-do-	W/SAH MISS GOURI KUMARI	-do-	01 DEC 97	-	2,841.00	
43.	-do-	W/MAN SHRI RCOP NARAYAN	-do-	-do-	-	2,841.00	
44.	-do-	CARPENTER SHRI MANOJ KUMAR	-do-	01 JUN 98	-	2,148.00	

TOTAL 3,67,128.00

केंद्रीय प्रशासनिक अधिदळ  
Central Administrative T...

विनय लाल  
Colonel  
Commanding Officer  
W. Lati Bench

विनय लाल  
विनय लाल

Annexure - 7

HQ 5 Mtn Div

Pin : 906405

C/O 99 APO

17 Apr 2005

3537/KM-3

701 MH  
C/O 99 APO

PAYMENT OF FIELD SERVICE CONCESSIONS  
(DUTY STATION HRA) TO DEFENCE CIVIL

A copy of CDA Guwahati letter No PAY/6/HRA/CCA/V dated 07 Mar 05 on the above subject is fwd herewith for your further necessary action.

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

- 4529

गुवाहाटी न्यायपाठ

5th Bench

Enclos : As above.

(S. Ramakrishnan)  
Major  
DADH  
or ADMS

Copy of CDA Guwahati letter No PAY/6/HRA/CCA/V dated 07 Mar 05.

/ AS ABOVE /

Payment of HRA to Defence Civilians serving in operational Areas and even to those retaining Govt. accommodation at old peace duty stations since Oct' 1986 is not in keeping with the Govt. orders. The matter has been examined in detail in MOD (FIN) and Ministry of Finance. Necessary instructions may please be issued to all concerned to stop payment of HRA to those Defence Civilians who are serving in Operational Areas and retaining Govt. accommodation at old peace duty station immediately.

✓ However the following information may please be furnished on priority for taking up the matter with MOD by CGDA, New Delhi.

1. No. of units involved.
2. No. of individuals who have been admitted HRA prior to 08.09.99 in Modified Field Areas.
3. Total financial implication in this regard.
4. Period of overpayment on a/c of HRA in Modified Field Areas.
5. Views whether recovery of HRA can be made from the salaries of the individuals under the order of CFA.

An immediate reply would be highly appreciated.

CTC

(Vinay Lal)

Colonel

Commanding Officer

Sd/- x x x x x  
(C.ZOTHANKHUMA)  
Jt. CONTROLLER

181 Military Hospital  
C/O 99 APO

18/05/2005

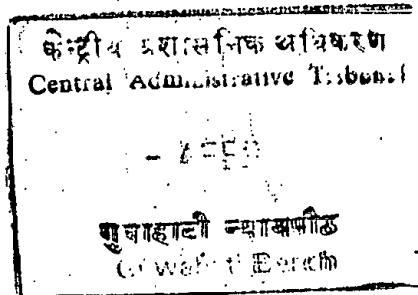
21 May 65

HQ 5 Mtn Div (Med)  
Pin : 908405  
C/O 99 APOPAYMENT OF FIELD SERVICE COMMISSION  
(DUTY STATION HRA) TO DEFENCE CIVIL

1. Ref your HQ letter No 3537/R/M-3 dt 17 Apr 2005.

2. The requisite info on the subject as asked vide your letter under ref is submitted herewith/for your further action please, as under

- No of units involved - One (181 MH, C/O 99 APO)
- No of individuals who have been admitted HRA - Forty four prior to 08.09.99 in Modified Field areas.
- Total financial implication in this regard - Rs.3,67,128/- (Rupees three lakh sixty seven thousand one hundred twenty eight only).
- Period of overpayment on a/c of HRA from 01 Oct 86 to 07 Sep 99.
- Views recovery of HRA can be made - Yes from the salaries of the individuals under the order of CFA.



*Jm*  
(VR Raina)  
Major  
Adm Officer  
DCC CO

*CL*  
(Vinay Lal)  
Colonel  
Commanding Officer

File in Court on 29/8/08  
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::::::: GUWAHATI

FILED BY

Smti Madhumati Thapa  
Applicant No. 1

through Advocate #2

IN THE MATTER OF :

204  
O.A. No. 240 of 2007

Smti Madhumati Thapa  
& Others

. . . Applicants

- Versus -

The Union of India & Ors.

. . . Respondents

- AND -

IN THE MATTER OF :

Rejoinder filed by the  
Applicants to the written  
statement filed by the  
Respondent No. 7.

The humble Applicants submit this Rejoinder as follows:

1. That with regard to the statement made in paragraph 1 (a) of the written statement the Applicants have no comment to offer.
2. That with regard to the statements made in paragraph 1 (b) to 1 (e) of the written statement the Applicants beg to state that the same are not correct and not sustainable in the eye of law. Moreover, those are false, irrelevant and also misleading to this Hon'ble Tribunal.
3. That with regard to the statements made in paragraph 2 of the written statement the Applicants beg

Recd  
M.U.Mu 29/8/08  
Smti Madhumati Thapa  
Advocate #2

01 SEP 2008

to offer no comment and ~~ज्येष्ठ पाठ~~ nothing is admitted.

Guwahati Bench

4. That with regard to the statement made in paragraph 3 of the written statement the Applicants beg to state that the Respondents themselves had paid the House Rent Allowance to the Applicants from 01.01.1986 to 07.09.1999. The Applicants reiterate that they have not taken the House Rent prior to 08.99 from the Respondents by any back door policy. The Respondents have themselves paid the House Rent and now the Respondents cannot take the stand that there is no authority of admissibility of House Rent to the Applicants. The Applicants cannot be held responsible for any lapse or negligence on the part of the Respondents in payment of House Rent Allowance to the Applicants.

5. That with regard to the statement made in paragraph 4, 5 & 6 of the written statement the Applicants beg to state that the same are matters of record and beyond nothing is admitted.

6. That with regard to the statement made in paragraph 7 to 11 of the written statement the Applicants beg to state that the Respondents had took the initiative to recover the House Rent from the Applicants for the period w.e.f. 01.10.1986 to 07.09.1999 in pursuance to the letter dated 31.07.2001 issued by the C.D.A., Patna i.e. Respondent No.5. But the Respondents themselves took 6 (six) years to issue the impugned order No. Pay/S/HRA/CCA/VI dated 02.04.2007 and dated 22.05.2007 to recover the House Rent from the Applicants without issuing any show cause or opportunity to the Applicants to defend themselves. The Applicants cannot be held responsible since they have no hand in the matter of sanction or discontinuation of

MAP/HU  
(Naresh Kumar Thapa)

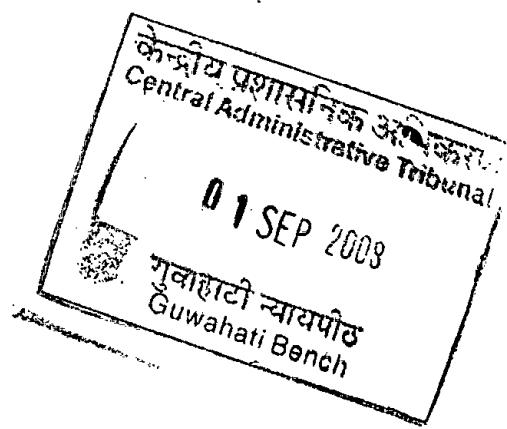
the said House Rent Allowance. The Applicants cannot be suffered if any mistakes committed by the Respondents in granting House Rent Allowance to them.

It is also humbly submit that in Shyam Babu Verma & Others -Vs- The Union of India & Others (1994) 2 SCC 521 where the Petitioner had been paid higher pay scale erroneously due to no fault of theirs, the Hon'ble Supreme Court observed that it shall only be just and proper not to recover any excess amount already paid to them.

Therefore, the written statement filed by the Respondents is wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of the Respondents to refute the contentions, averments, questions of law and grounds made by the Applicants in the Original Application filed by the Applicants deserved to be allowed by this Hon'ble Tribunal.



M A T H O  
(Mathuram Thapa)



### VERIFICATION

I, Smti Madhumati Thapa, P. No.484679, Female Sweeper, Office of the Commanding Officer, 181 Military Hospital, C/o 99 APO do hereby solemnly verify that the statements made in paragraph nos. 1, 2, 3, 4 & 5, 6 (Partly) above rejoinder are true to my knowledge and rests are my humble submissions before this Hon'ble Tribunal.

And I sign this Verification on this the 29<sup>th</sup> day of August 2008 at Guwahati.

*Madhu*

*(Madhumati Thapa)*

**D E C L A R A N T**